

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN

UNITED STATES OF AMERICA,

Plaintiff,

Case No. 23-mj-30098

v.

HON. PATRICIA MORRIS

RANDALL ROBERT BERKA, II,

United States Magistrate Judge

Defendant.

STIPULATION TO ADJOURN PRELIMINARY HEARING
AND FOR A FINDING OF EXCLUDABLE DELAY

The parties jointly submit this stipulation and request that the Court adjourn the preliminary hearing in this matter, continue the time in which an indictment must be returned for approximately 30 days and find that the ends of justice served by this continuance outweigh the best interests of the defendant and the public in a speedy indictment.

Defendant was arrested on the criminal complaint and made his initial appearance in this case on March 10, 2023. The preliminary hearing was scheduled for March 24, 2023.

Ordinarily, an indictment must be returned within thirty days from the date on which a defendant is arrested on a complaint. 18 U.S.C. § 3161(b). That period may be continued by the Court, however, and under some circumstances the resulting period of delay may be found to be excludable delay for purposes of the

30-day clock of § 3161(b). 18 U.S.C. § 3161(h)(7)(A).

The parties' reasons for the continuance and for a finding of excludable delay are as follows. The parties need additional time to resolve legal issues associated with the investigation and defense counsel needs time to review discovery and assess the government's case against defendant.

In light of the above, the parties submit that there is good cause to adjourn the preliminary hearing. Moreover, defendant has consented to this adjournment, and the adjournment sought is fairly limited. *See* Fed. R. Crim. P. 5.1(d) ("With the defendant's consent and upon a showing of good cause – taking into account the public interest in the prompt disposition of criminal cases – a magistrate judge may extend the time limits in Rule 5.1(c) one or more times.").

The parties submit that the ends of justice served by a 30-day continuance of the time period in which to indict under the Speedy Trial Act will outweigh the best interest of the public and the defendant in a speedy indictment. *See* 18 U.S.C. § 3161(h)(7) ("The following periods of delay shall be excluded in computing the time within which an information or an indictment must be filed: . . . (7) Any period of delay resulting from a continuance granted by any judge on his own motion or at the request of the defendant or his counsel, or at the request of the attorney for the Government, if the judge granted such continuance on the basis of his findings that the ends of justice served by taking such action outweigh the best

interest of the public and the defendant in a speedy [indictment].”).

Accordingly, the parties request that this Court find there is good cause to adjourn the preliminary hearing in this case and order that the preliminary hearing be adjourned until April 24, 2023. As set forth above, the parties agree that the time between March 24, 2023 and April 24, 2023 is excludable. 18 U.S.C. § 3161(h).

DAWN N. ISON
United States Attorney

s/Katharine Hemann
Katharine Hemann
Assistant United States Attorney
101 First Street, Suite 200
Bay City, MI 48708
(989) 895-5712
Katharine.Hemann@usdoj.gov

s/Bryan Sherer
Bryan Sherer
Attorney for Defendant
111 E. Court Street, Suite L-100
Flint, MI 48502
bryan.sherer@fd.org

Dated: March 15, 2023

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN

UNITED STATES OF AMERICA,

Plaintiff,

Case No. 23-mj-30098

v.

HON. PATRICIA MORRIS

RANDALL ROBERT BERKA, II,

United States Magistrate Judge

Defendant,

ORDER CONTINUING THE TIME IN WHICH AN INDICTMENT OR
INFORMATION MUST BE FILED AND FINDING EXCLUDABLE DELAY

The Court has considered the parties' stipulation and joint motion to continue for an additional 30 the time period in which an indictment must be filed and hereby grants that request. For the reasons described in the parties' submission, the Court finds that failure to grant a continuance would likely make a continuation of the proceeding impossible or result in a miscarriage of justice. *See* 18 U.S.C. § 3161(h)(7)(B)(i).

Accordingly, the Court finds, after considering the factors set forth in 18 U.S.C. § 3161(h)(7)(B), that the ends of justice served by this continuance outweigh the best interests of the public and the defendant in a speedy indictment and that the 30-day continuance qualifies as excludable delay under 18 U.S.C. § 3161(h)(7)(A).

IT IS THEREFORE ORDERED that the time in which the government must return an indictment and the preliminary hearing date are extended by an additional 30 days, and that the time-period between March 24, 2023, the date on which an indictment was otherwise required to be filed under 18 U.S.C. § 3161(b) and April 24, 2023, is excludable under 18 U.S.C. § 3161(h).

IT IS FURTHER ORDERED that the preliminary hearing is rescheduled for April 24, 2023 at 1:30 p.m.

s/ Patricia T. Morris
HON. PATRICIA T. MORRIS
United States Magistrate Judge

Entered: March 15, 2023